***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION Nos : 405 & 716 of 2005

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% 28.01.2005

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Between:

The Mahabubnagar Toddy Tappers Cooperative Society, Mahabubnagar, Rep. by its President G. Venkataramulu Goud,
S/o. Sandanna Goud, Aged 45 Years, Bandameedipalli, Mahabubnagar District.

..... PETITIONER

AND

1 The Superintendent of Prohibition & Excise, Mahabubnagar District, Mahabubnagar.
2 The Deputy Commissioner of Prohibition & Excise, Mahabubnagar District, Mahabubnagar.
3 Sri G. Kurmaiah Goud, S/o. G. Sandanna Goud,
R/o. Bandameedipalli Village, Mahabubnagar District.
4 Sri Sathoor Rajeswar Goud, S/o. Sathoor Shankaraiah Goud,
Old Palamoor, Mahabubnagar District.
5 P. Ramulu Goud, S/o. Narayana Goud,
New Town, Mahabubnagar District.

.....RESPONDENTS

! COUNSEL FOR THE PETITIOENR: MR.C.B.RAM MOHAN REDDY & MR.B.PURSHOTHAM REDDY

^ COUNSEL FOR THE RESPONDENTS: GP FOR PROHIBITION & EXCISE

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> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs: 405 of 2005 & 716 of 2005

W.P.NO.405 OF 2005

Between:

The Mahabubnagar Toddy Tappers Cooperative Society, Mahabubnagar,

Rep. by its President G. Venkataramulu Goud, S/o. Sandanna Goud,

Aged 45 Years, R/o. Bandameedipalli, Mahabubnagar District.

..... PETITIONER

AND

1 The Superintendent of Prohibition & Excise,

Mahabubnagar District, Mahabubnagar.
2 The Deputy Commissioner of Prohibition & Excise,

Mahabubnagar District, Mahabubnagar.
3 Sri G. Kurmaiah Goud, S/o. G. Sandanna Goud,
R/o. Bandameedipalli Village, Mahabubnagar District.
4 Sri Sathoor Rajeswar Goud, S/o. Sathoor Shankaraiah Goud,
R/o.Old Palamoor, Mahabubnagar District.
5 P. Ramulu Goud, S/o. Narayana Goud,
R/o.New Town, Mahabubnagar District.

...RESPONDENTS

Petition filed under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction more particularly in the nature of Writ of MANDAMUS declaring the order of the 1st respondent in his Proceedings Rc.No.A7/1249/2000 dated 19-1-2005 passed under Sec.34(1) of the A.P. Cooperative Societies Act, 1964 as illegal, arbitrary, unconstitutional and against the principles of natural justice

Counsel for the Petitioner:MR.C.B.RAM MOHAN REDDY

Counsel for the Respondent Nos.1&2: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent Nos.3 to 5: M/s.D.Prakash Reddy & V.Ravinder Rao

WRIT PETITION NO : 716 of 2005

Between:

The Mahaboobnagar Toddy Tappers Co-operative Society,

Mahaboobnagar, Rep. by its Director M. Gopal Goud
S/o Ramulu, aged 56 years, R/o Mahaboobnagar, Mahaboobnagar District.

..... PETITIONER

AND

1 The Superintendent of Prohibition and Excise,

Mahaboobnagar District, Mahaboobnagar.
2 The Deputy Commissioner of Prohibition and Excise,

Mahaboobnagar District.
3 Sri G. Kurmaiah Goud, S/o G. Sadanna goud,
R/o Bandameedipalli, Mahaboobnagar District.
4 Sri Sathoor Rajeswar Goud, S/o Sathoor Shankaraiah Goud,
R/o.Old Palmoor, Mahaboobnagar.
5 P. Ramulu Goud, S/o Narayana Goud,
R/o.New Town, Mahaboobnagar .

...RESPONDENTS

Petition filed under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ Order or Direction more particularly one in the nature of Writ of Mandamus, declaring the order of the 1st respondent vide Proceedings Rc.No. A7/1249/2000 dt. 19-1-2005 passed U/Sec. 34(1) of the A.P. Co-operative Societies Act, 1964 as illegal, arbitrary, unconstitutional and against to the principles of natural justice.

COUNSEL FOR THE PETITIONER: MR.B.PURUSHOTHAM REDDY

Counsel for the Respondent Nos.1&2: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent Nos.3 to 5: M/S.D.PRAKASH REDDY, MR.V.RAVINDER RAO

The Court at the admission stage made the following :

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COMMON ORDER:

In these two writ petitions the proceedings dated 19-01-2005 issued by the Superintendent of Prohibition and Excise, Mahabubnagar, the 1st respondent, under Section 34 (1) of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') are challenged. Hence, they are disposed of through a common order.

The petitioner, in W.P.No.405 of 2005, is the Toddy Tapper Cooperative Society, represented by its President; and W.P.No.716 of 2005 is filed by the same Society through one of its Directors. The respondents in both the writ petitions are common.

The petitioner-society was formed under the provisions of the Act, with the Toddy Tappers of Mahabubnagar town as its members. It is granted as many as 17 licences for establishment of 17 shops, in an around the Mahabubnagar town. The licences are valid up to 31-03-2007. The petitioner is operating through an elected managing committee.

On the allegation that an unauthorized depot was being run by the petitioner, a show cause notice dated 02-12-2004 was issued by the 1st respondent, as to why the licence shall not be suspended. Petitioner submitted explanation. Anticipating that orders of suspension would be passed, and it would be disabled from conducting business, the petitioner filed W.P.No.23280 of 2004. The writ petition was disposed

of on

15-12-2004, directing that the 1st respondent may proceed with the enquiry, and in the event of an order of suspension being passed, by the 1st respondent, it shall not be given effect to, for a period of two weeks from the date of service of the same.

The 1st respondent passed an order dated 22-12-2004, suspending the licence. It is said to have been served on the petitioner on 28-12-2004. On the basis of the order of suspension, the 1st respondent issued a show cause notice dated 30-12-2004, to the petitioner, directing it to explain as to why the managing committee shall not be superceded under Section 34 of the Act. Petitioner submitted its explanation on 18-01-2005. Petitioner claims that it was served with an order of supercession dated 19-01-2005, even by 7:00 a.m. on 19-01-2005.

Sri C.B. Rammohan Reddy, learned counsel appearing for the Society submits that the whole exercise of powers by the 1st respondent, be it, in the matter of suspension of licence, or supercession of the committee, smacks of arbitrariness. He contends that despite the directions by this Court that in the event of order of suspension being passed against the petitioner, it shall not be given effect to, for a period of two weeks; was flouted by the 1st respondent with impunity, and he has chosen to initiate proceedings under Section 34 of the Act, soon after service of the order of suspension. He also submits that the Society preferred an appeal before the 2nd respondent against the order of suspension and with undue haste, and at the instance of respondents 3 to 5, the 1st respondent had chosen to pass the impugned order. He pleads that the 1st respondent did not serve notice on the other members of the committee.

Sri B. Purushotham Reddy, learned counsel for the petitioner in W.P.No.716 of 2005, submits that the show cause notice dated

30-12-2004, was served by the 1st respondent on the President of the society alone, and that the Directors were not at all issued any show cause notice. He contends that even on merits, the order of the 1st respondent cannot be sustained.

Learned Government Pleader for Prohibition and Excise, on the other hand, submits that the 1st respondent complied with the procedure prescribed under Section 34 (1) of the Act, and that the impugned order is legal and valid. She also contends that

service of show cause notice on the President, deserves to be treated as the one on the members of the managing committee. It is further pleaded that petitioner can avail the remedy of appeal.

Sri D. Prakash Reddy, learned Senior Counsel appearing for respondents 3 to 5, in both the writ petitions, submits that the society has resorted to several illegal and unlawful acts, and it was at the instance of respondents 3 to 5, that proceedings under A.P. Excise Act as well as the A.P. Cooperative Societies Act were initiated. He submits that the impugned order was passed duly observing procedure prescribed under the Act, and that the impugned order does not warrant any interference.

The sole basis for the 1st respondent to initiate proceedings against the petitioner-society was the order dated 22-12-2004, suspending the licence of the petitioner. The basis of the order of suspension, in turn was the noticing of an unauthorized depot, alleged to have been established by the petitioner. The validity or otherwise of the order of suspension is not the subject matter of this writ petition.

On receipt of a show cause notice, for suspension of the licence, the petitioner approached this Court by filing a writ petition. It was disposed of with a clear direction that, in the event of order of suspension being passed against the petitioner, it shall not be given effect to, for a period of two weeks. The 1st respondent passed an order dated 22-12-2004, suspending the licence. No period as such was mentioned. It was served upon the society on 28-12-2004. The 1st respondent was under obligation, not to give effect to the same, in any manner, till the expiry of the period of two weeks from the date of service. However, he issued a show cause notice dated 30-12-2004, under Section 34 of the Act, requiring the petitioner to show cause as to why the managing committee shall not be superceded. Except the factum of the suspension of the licence, no other ground was indicated. It is a clear case of flouting the orders of this Court in W.P.No.23280 of 2004, on the part of the 1st respondent. The prohibition in giving effect to the order of suspension, for a period of two weeks, was not restricted to any specific purpose. When this was pointed out, the 1st respondent who was present in the Court, expressed his regrets, and assured that such instances will not be permitted to recur.

The action that may be taken under Section 34 of the Act is, against the managing committee. Each member of the managing committee is effected by such proceedings. Therefore, they are entitled to be served with notices, individually. In a given case, some of the members of the committee may be in a position to defend their case, and convince the authority concerned, to drop the proceedings. It is not uncommon that polarization exists, within a committee, and there may be vast difference of opinion. Therefore, it is mandatory that each member is put on notice, in any action proposed under Section 34 of the Act. The authority cannot initiate or continue the proceedings, simply by serving show cause notice on the Chairman or President of the Managing Committee. It is not in dispute that the show cause notice dated 30-12-2004, was served only upon the President of society. Therefore, there is serious irregularity and lapse in the proceedings initiated by the 1st respondent. In view of the violation of principles of natural justice, alternative remedy of appeal does not bar the writ petition.

Further, by the time the impugned order was passed, the appeal preferred by the petitioner was pending. The petitioner has already approached this Court complaining about the inaction on the part of the appellate authority, in passing the interim orders. Viewed from any angle, there was no justification for the 1st respondent in passing the impugned order.

The writ petitions are accordingly allowed. The 1st respondent shall be entitled to initiate proceedings against the society only after the appeal preferred by the petitioner, against the order dated 22-12-2004, suspending the licence, is disposed of. In case, any necessity arises to initiate proceedings under Section 34 of the Act, against the petitioner-society, it shall be only on service of individual notices on the concerned Directors, and not otherwise. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.28–01—2005

Note:

L.R. copy to be marked.

(B/O)

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(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy, for his Lordship's kind perusal)

To

1. The Superintendent of Prohibition & Excise,

Mahabubnagar District, Mahabubnagar.

2. The Deputy Commissioner of Prohibition & Excise,

Mahabubnagar Division, Mahabubnagar.

3. 2CCs to G.P. for Prohibition & Excise, High Court of A.P.,

High Court Buildings, Hyderabad (OUT).

4. 2CD copies

5. 8 L.R.copies

6. The Principal Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

7. The Secretary, A.P.Advocates Association, Library,

High Court buildings, Hyderabad.